



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF**

**Cary Carson,**

**Complainant**

**and**

**Armstrong World Industries,**

**Respondent**

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**CHARGE NO.: 1994 CA 0286**

**EEOC NO.: 21B 933072**

**ALS NO.: 9974**

**RECOMMENDED ORDER AND DECISION**

This matter comes before the Commission on Respondent's Motion to Dismiss Complaint with Prejudice ("Motion"), filed on September 13, 2000. Complainant filed no response in accord with the original filing date, but it was later discovered that the Motion was not served upon the Department of Human Rights ("Department"). When Respondent was given the opportunity to perfect its service, Complainant was also given another opportunity to respond to the Motion. Complainant's response was subsequently timely filed on March 27, 2001 and Respondent filed a reply on April 5, 2001. All relevant documents have been served on the Department and it has chosen not to file any response to the Motion. There is no further activity reflected in the record and it is now ready for disposition.

**Statement of the Case**

The Department of Human Rights filed the complaint in this case on June 5, 1997 and Respondent's verified answer was filed on July 7, 1997. A stay as requested by Complainant was granted on March 4, 1998 so that Complainant could pursue his remedies in the federal judicial system. On February 23, 2000, counsel for Respondent reported at the regular status hearing for the case that Respondent was granted summary judgment by the federal district court

on November 30, 1999. At the next status hearing, on August 23, 2000, the stay was dissolved and a status hearing for setting a new scheduling order in this case was set for September 7, 2000. On September 7, 2000, leave was given to Respondent to file a motion to dismiss by September 14, 2000 and dates were set for the response and reply. The instant Motion was then timely filed, although not served on all necessary parties, on September 13, 2000 and the remainder of the history of the case is noted above.

### **Findings of Fact**

1. Respondent, represented by counsel, was properly served with notice of this matter and timely filed its verified answer.
2. Complainant was given notice of the impending filing of Respondent's Motion to Dismiss while attending the status hearing on September 7, 2000 and responded only when given a "second chance" to do so because Respondent failed to serve the Motion on the Department.
3. Complainant filed suit in the federal district court (98 C 4205, Northern District of Illinois) and the case was ultimately dismissed in its entirety when the assigned judge granted Respondent's Motion for Summary Judgment by order entered on November 29, 1999.
4. The issues determined in the order of the federal district court granting the Motion for Summary Judgment are identical to those that would be determined in the matter presently pending before the Commission.

### **Conclusions of Law**

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B) respectively.
2. The Commission has jurisdiction over the parties and the subject matter of this

action.

3. The complaint filed by Complainant in the federal district court was dismissed upon granting of Respondent's Motion for Summary Judgment on November 29, 1999. That judgment disposed of a case with an identity of parties and identity of the cause of action with the instant case, and it was a final judgment on the merits, thus entitling Respondent to application of the doctrine of *res judicata* in this case. King and MCI Telecommunications Corp., Ill. H.R.C. Rep. (1989CF2910, April 7, 1999).

4. The federal district court entered a finding regarding all elements of the *prima facie* case that Complainant was required to establish in that court, and which he likewise would be required to establish in this forum.

### **Discussion**

It is well settled in matters brought to the Commission that the doctrine of *res judicata* is applicable in the appropriate case. In his response to the Motion, which was permitted only because of the serendipitous circumstance of incomplete service on the part of the Respondent, Complainant argues that while the federal case involved the same parties and the same claim of unlawful discrimination on the basis of race, the disposition of that case by summary judgment is not *res judicata* because the federal judge did not render a specific ruling on one of the four prongs of the so-called McDonnell Douglas test. Namely, Complainant alleges that the federal court did not determine if Complainant was treated differently than similarly situated employees who were not in the protected class.

The decision by Federal District Court Judge James F. Holderman, as submitted by Respondent, indicates that it is disingenuous for Complainant to make this claim. The decision includes an extensive discussion of the various alleged transgressions of Complainant and the

two comparable white employees named in his charge and complaint. The federal judge determined that the two white employees were not “similarly situated” in relation to Complainant as there were no facts showing that the white workers had threatened their supervisor and neither of the white employees had the extensive negative work history demonstrated by Complainant.

Any fair reading of Judge Holderman’s order in this case indicates that he found in Complainant’s favor with regard to the first three prongs of the McDonnell Douglas test, *i.e.*, that Complainant was a member of a protected class, that he suffered an adverse employment action and, in the absence of specific evidence of the quality of his work at the time of the subject adverse action, that he was meeting the requirements of his employment. The judge then found that Complainant had not provided evidence supporting the fourth prong as noted above. All of the issues that would be before the Commission if this case were permitted to proceed to public hearing were decided in the November 29, 1999 order of Judge Holderman. Therefore, I recommend that the Commission dismiss this cause with prejudice under the doctrine of *res judicata*.

### **Recommendation**

It is recommended that Respondent’s Motion be granted and this case be dismissed with prejudice

HUMAN RIGHTS COMMISSION

ENTERED:

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July 18, 2001

BY: \_\_\_\_\_  
DAVID J. BRENT  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION